

PUBLIC POWER COUNCIL
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May 29, 2002

VIA ELECTRONIC FILING

Hon. Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: *Avista Corporation*, No. RT01- 35-005

Dear Secretary Salas:

On behalf of the Public Power Council, enclosed for filing in the above captioned proceedings is the *Protest and Comments of the Public Power Council on the Filing Utilities' Stage 2 Filing and Request for Declaratory Order* .

Thank you for your assistance in this matter.

Sincerely,

--s --

Denise Peterson
Attorney for Public Power Council
denisep@ppcpdx.org

Enclosure

cc: Service List (with enclosure)

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation,)	
Bonneville Power Administration,)	
Idaho Power Company,)	
The Montana Power Company,)	
Nevada Power Company,)	Docket No. RT01 -35-005
PacifiCorp,)	
Portland General Electric Company,)	
Puget Sound Energy, Inc., and)	
Sierra Pacific Power Company.)	

**Protest and Comments of the Public Power Council
on the Filing Utilities' Stage 2 Filing and
Request for Declaratory Order Pursuant to Order 2000**

The Public Power Council (PPC) protests and comments on the Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000, submitted to the Federal Energy Regulatory Commission (the Commission) on March 29, 2002, ¹in the sedockets by Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company and Sierra Pacific Power Company (collectively, the Filing Utilities). PPC files this Protest and Comments pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.211, and pursuant to the Commission's Notice of Extension of Time dated April 17, 2002, in the sedockets.

¹This submission was corrected by the Filing Utilities in an Errata Filing Relating to Stage 2 Filing and Request for Declaratory Order, filed on April 22, 2002.

PPC represents approximately 110 consumer -owned utilities. PPC member utilities are located in Washington, Oregon, Idaho, Montana, Nevada, Wyoming and Utah. These utilities run the gamut from very small cooperative utilities to very large municipal utilities. The vast majority are transmission dependent utilities that purchase some or all of their power requirements from Bonneville Power Administration. PPC separately filed a motion to intervene in these dockets pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.214. That motion was granted in the Commission's April 26, 2001, order in this docket. *Avista Corporation*, 95 FERC ¶ 61,114 at 61,323 (Apr. 26, 2001).

I. INTRODUCTION: THE RTO WEST PROPOSAL WILL NOT PRODUCE BENEFITS TO NORTHWEST CONSUMERS SUFFICIENT TO MAKE THE PROPOSAL JUST AND REASONABLE.

PPC has been involved over the last six years in processes to develop a regional transmission entity.² For the past two years, PPC has participated in the process to develop RTOWest. PPC undertook this work with the single purpose of protecting consumers served by PPC's utility members. PPC continues to hold to that purpose. It is from that perspective that PPC concludes that it cannot support the proposal contained in RTOWest's stage 2 filing. The cost -benefit analyses of the RTOWest proposal demonstrate at best marginal benefits; the more likely result is the imposition of net costs. A proposal that would impose a cost without conferring a commensurate benefit is not just or reasonable.

In *Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. FERC*, 272 F.3d 609 (D.C. Cir. 2001) (*per curiam*), the court acknowledged that the Commission must address cost -

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RTOWEST STAGE 2 FILING AND
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benefit analyses when they are presented in a proceeding for approval of an RTO proposal. *Snohomish*, 272 F.3d at 619. ³The Federal Power Act and the Administrative Procedures Act require consideration of cost-benefit analyses. *Id.*; 16 U.S.C. §§ 824b, 824d; 5 U.S.C. § 706. Section 203 of the Federal Power Act requires that the Commission approved disposition of facilities by jurisdictional utilities only if those dispositions are in the public interest. 16 U.S.C. § 824b(a); *see Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 944 (1st Cir. 1993). Section 205 of the Federal Power Act provides that all rates and charges of a jurisdictional utility must be just and reasonable and not unduly discriminatory. 16 U.S.C. § 824d(a), (b); *see, e.g., Louisiana Energy & Power Auth. v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998). The purpose for the just and reasonable, and indeed one of the Act's purposes, is to protect consumers of the jurisdictional utility seeking to establish the rate or tariff. *Gulf States Util. Co. v. FPC*, 411 U.S. 747, 758, 93 S.Ct. 1870, 36 L.Ed.2d 635 (1973); ⁴*see, e.g., Sithe/Independence Power Partners v. FERC*, 285 F.3d 1 (D.C. Cir. 2002).

The Public Generating Pool, Washington Public Utility District Assn., *et al.* (PGP, WPUDA, *et al.*), intervenors in these proceedings, append to their protest the Filing Utilities' stage 2 cost-benefit study, a critique of that study and other documents as Exhibits 1 through 5. These materials demonstrate that the likely effect on Northwest consumers is the imposition of net costs and we incorporate these materials by reference.

² Aneffort to form a grid operator, IndeGO, in 1996-98 failed.

³ The decision to form an RTO is a voluntary one. *Regional Transmission Organizations*, Order 2000, FERC Stats. & Regs. ¶ 31,089 at 31,033-34 (1999), *order on reh'g*, Order No. 2000-1-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd subnom. Pub. Util. Dist. No. 1 of Snohomish County, Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *Snohomish*, 272 F.3d at 609-10.

PPC refers the Commission to comments filed on April 9, 2002, by PPC in this docket in regard to the ICFE Economic Evaluation. PPC also concurs in section II and III of the PGP, WPUDA, *etal*, protest.

Taken together, these comments and exhibits demonstrate that the formation of an RTO in the Northwest, given the broad outlines that the Commission has prescribed, will not benefit Northwest consumers. ⁵Based on the work completed by stakeholders, including PPC, and referred to by the PGP, WPUDA, *etal*, protest in sections II(D), PPC concurs that establishment of RTOWest would likely cost Northwest consumers approximately \$445 million per year. While PPC believes that net cost estimates can be further refined, this estimate is a mid-range number based on estimates that fall between scenarios most -favorable and least -favorable to RTOWest. The important fact is that consumers in the Northwest will pay millions of dollars per year if RTOWest is established and receive no offsetting benefit in return.

A proposed rate that costs consumers without conferring a commensurate benefit cannot be justified as reasonable or in the public interest. *Process Gas Consumers Group v. FERC*, 30 F.2d 926, 931 (D.C. Cir. 1989) (applying parallel provision in the Natural Gas Act). This issue is ready for decision now. Sections 203 and 205 of the Federal Power Act underlie Order 2000's functions and characteristics. The proposal must comply with the statute in order to meet the functions and characteristics in aggregate. Because the

⁴"The Act had two primary and related purposes: to curb abusive practices of public utility companies by bringing them under effective control, and to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce." *Gulf States*, 411 U.S. at 758.

⁵ A smaller organization or multi-party arrangement that addresses barriers to transmission access and adequacy in the Northwest in a less capital-intensive and costly manner may well meet the statutory test for a just and reasonable rate. We do not foreclose that possibility. PPC will explore formation of such an organization with the Filing Utilities and others.

proposal fail to do so, the Commission must deny the requested declaratory judgment and reject the RTOWest proposal.

II. COLLABORATIVE PROCESS.

In their Filing Letter the Filing Utilities assert that "content groups" carried out the initial work of developing the Stage 2 proposal. Filing Letter at 17. Representatives of the Filing Utilities, public power, industrial customers, state organizations and others staffed these content groups. PPC notes, however, that in December 2001 the Filing Utilities withdrew the development of draft proposals from the pricing and congestion management content groups.⁶ In a series of closed-door meetings, the Filing Utilities significantly altered the proposals developed in the public sessions. Although the Filing Utilities held a number of public meetings on these proposals during late 2001 and 2002, they declined to alter the proposals in any meaningful respect in response to difficulties identified by interested parties. The Commission should not be left with the impression that the Stage 2 filing represents a consensus proposal from the Northwest.⁷

⁶The TOA liability provisions also were not developed in a stakeholder process. See Comments of Avista Corporation, *Standardizing Generator Interconnection Agreements and Procedures*, FERC Docket No. RM02-1-000, p. 19 (Jan. 31, 2002) ("This Agreement [the Stage 2 liability agreement] is not, however, the result of a collaborative public process, and it does not contain the same provisions that were in the original RTOWest Liability Agreement...").

⁷The Filing Utilities assert that the proposal "reflects the participation of a broad range of interested stakeholders and years of exploring many ideas for how best to accomplish the objectives articulated in Order 2000. It is informed by the significant contributions of stakeholders through written materials and input at Regional Representatives Group meetings and content-group meetings, and outreach by individual Filing Utilities to interested parties." Filing Letter at 18. While the meetings occurred, we dispute Filing Utility assertions of adequate input by non-Filing Utilities after the proposals were withdrawn from the content groups in December 2001.

III. CATALOGUING OF EXISTING TRANSMISSION RIGHTS AND CONGESTION MANAGEMENT.

A. PPC Concur in the Comment of Northwest Requirements Utilities That the Preservation and Protection of Existing Transmission Rights Is Not Implemented Effectively in the Stage 2 Proposal.

PPC concurs in the comments of Northwest Requirements Utilities, an intervenor in this proceeding, in section III(B)(1) of its Comments and Protest filed in this docket on May 29, 2002. While the draft Transmission Operating Agreement (TOA)⁸ evidences a general intention to protect and preserve existing transmission rights, it does not provide any mechanism to enforce those rights and provide significant opportunities to diminish those rights. For PPC, the enforceable protection of existing transmission rights and the ability to continue the current services under existing contracts is, and will continue to be, a crucial feature of any RTOW proposal for the Northwest. Without such protections, PPC will not support RTOWest.

B. The Exclusion of Unconverted Existing Transmission Rights Holders from the Cataloguing Process Violates Commission Policy.

The TOA gives RTOWest and the Participating Transmission Owner (PTO)⁹ providing transmission services under an existing contract the right to interpret and catalogue unconverted existing transmission rights. Filing Letter, Attach. A, §§ 8.3, 8.4. The unconverted rights holder has no right to participate in this process. Providing the PTO and RTOWest with this authority, to the exclusion of the rights holder, violates Commission policy.

⁸Filing Letter, Attach. A.

⁹For simplicity's sake "PTO" includes "Executing Transmission Owner" as that term is used in the TOA.

1. *The Commission has found that vertically -integrated utilities have an inherent interest in minimizing other utilities' access to transmission and they act upon that interest; thus, as a matter of policy vertically-integrated utilities should not be given an opportunity to do so .*

In its effort to open up wholesale electricity markets, the Commission decried the ability of transmission owners to use their monopoly power to block access to transmission for competing generation and loads. The need to eliminate the ability of transmission owners to block access to the markets was one reason that led the Commission to issue Order 888.¹⁰

[U]tilities owning or controlling transmission facilities possess substantial market power; that, as profit maximizing firms, they have and will continue to exercise that market power in order to maintain and increase market share, and will thus deny their wholesale customers access to competitively priced electric generation; and that these unduly discriminatory practices will deny consumers the substantial benefit of lower electricity prices.

Promoting Wholesale Competition Through Open Access Non-Discriminatory

Transmission Service, etc., Notice of Proposed Rulemaking, 60 Fed. Reg. 17,662 (Apr. 7, 1995), FERC Stats. & Regs. ¶32,514 at 33,052 (1995). The Commission intended that

¹⁰Transmission is a regulated monopoly. See *Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Services, etc.*, Order 888, FERC Stats. & Regs. ¶31,036 at 31,649 (1996), *order on reh'g* Order No. 888 -A, FERC Stats. & Regs. ¶31,048 (1997), Order 888 -B, 81 FERC ¶61,248 (1997), Order No. 888 -C, 82 FERC ¶61,046 (1998), *aff'd subnom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*per curiam*), *aff'd subnom. New York v. FERC*, ___ U.S. ___, 122 S.Ct. 1012 (2002). Order 888 notes that "transmission remains a natural monopoly." Order 888, FERC Stats. & Regs. at 31,64, citing *KCP & L*, 67 FERC ¶61,183 (1994). "The most likely route to market power in today's electric utility industry lies through ownership or control of transmission facilities. Usually, the source of market power is dominant or exclusive ownership of the facilities. However, market power also may be gained without ownership. Contracts can confer the same rights of control. Entities with contractual control over transmission facilities can withhold supply and extract monopoly prices just as effectively as those who control facilities through ownership." Order 888, FERC Stats. & Regs. ¶31,036 at 31,643.

implementation of Order 2000¹¹ would remedy "lingering opportunities for transmission owner to discriminate to favor their own activities." *Snohomish*, 272 F.3d at 611.

2. *The RTOWest stage 2 proposal permits PTOs to minimize existing transmission rights in the cataloging process in violation of Commission policy.*

The Stage 2 proposal gives the PTO and RTOWest the ability to determine the terms and conditions of the unconverted transmission contracts without input from the contract holder. The TOA provides that RTOWest will provide transmission rights to each PTO sufficient to meet the PTO's contractual obligations to its existing customers. Filing Letter, Attach. A, §§ 8.3, 9.2, 9.4. RTOWest catalogs those existing transmission rights. *Cf.* Filing Letter, Attach. A, § 8.3. The right to have existing transmission rights cataloged and the right to have those existing rights served, however, are rights and obligations of RTOWest and the PTO. Arbitration over whether those rights are properly cataloged and served is not available to the existing rights holder under the TOA.¹²

The cataloging process puts in control of an existing contract two entities that have enormous incentives to minimize the rights contained in the contract. The PTO has two sources of incentive to minimize the rights provided in the existing contract. First, minimizing the existing rights reduces the ability of the rightsholder to obtain access to competitors' energy. Second, minimizing the existing rights reduces the amount of transmission resources, and generation resources that support the transmission system,

¹¹ *Regional Transmission Organizations*, Order 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000 -A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

which the PTO must commit to serving those existing rights. Pursuant to section 8.4.1, the PTO must provide to RTOWest Congestion Management Assets "sufficient for (1) RTOWest's provision of services for the [PTO]... transmission function's Non - Converted Transmission Agreements consistent with the Catalogued Transmission Rights set forth in Exhibit F[.]" Filing Letter, Attach. A, § 8.4.1. "Congestion Management Assets" is defined to include redispatch services. Filing Letter, Attach. A, Exh. A, p. A -4. PTOs must commit to dispatch their plants in order to maintain a transfer capability of the systems sufficient to meet existing contracts. The more resources that the PTO must commit, the fewer resources it can sell in the market.

RTOWest has a similar incentive to minimize existing rights. The more transmission that is needed to serve existing rights, the less transmission is available to RTOWest to sell. RTOWest will be under pressure to produce and sell as much transmission product as possible. ¹³ Pressure will come from transmission users that are not load serving entities with existing rights and from short-term transmission users. Their interest is for RTOWest to expand the amount of existing system capability that supports Firm Transmission Options (FTOs).

The existing rightsholder must receive all of the rights to which it is legally entitled pursuant to the contract. Yet, the existing rightsholder is not permitted to be present at cataloging and neither RTOWest nor the PTO has an interest in protecting the

¹² The dispute resolution procedures in Exhibit P of the TOA are available only to existing transmission rightsholder that convert their service to RTOWest service. Filing Letter, Attach. A, Exhibit P, p. P -1; § II, p. P -2 -P -3.

¹³ For example, in the Congestion Management Proposal note that incentives for existing transmission right conversion are built into the proposal. "If, after an initial period of operating experience, RTOWest determines that the incentives for voluntary contract conversion are not working as expected, it may need to further evaluate FTO conversion incentives." Filing Letter, Attach. F, p. 17.

legitimate rights of the existing rightsholder. The existing rightsholder has no right to alternative dispute resolution with RTOWest.¹⁴ The right to file a complaint with the Commission against the PTO based on the underlying existing contract is insufficient because the result would not bind RTOWest. RTOWest owes no contractual obligation to the existing rightsholder and would not be party to the complaint.

Thus, it is contrary to established Commission policy to permit RTOWest and the PTO to fix, without the rightsholder's participation or recourse, the rights of unconverted transmission contracts. Furthermore, permitting the Filing Utilities to do so is unduly discriminatory. Some rights are provided to existing rightsholders that choose to convert their contracts, although they are fewer rights than the Filing Utilities afford themselves. In Exhibit P to the TOA a converting customer is provided arbitration rights. Filing Letter, Attach. A, Exh. P, §II. While it could be appropriate to provide incentives to parties to convert their contracts, the Commission cannot approve a proposal and incentives that are unduly discriminatory. Depriving a party of an effective remedy cannot under any circumstances be considered an appropriate incentive.

PPC does not argue or recommend that the cataloging process be rejected. In order to prevent abuse by PTOs and prevent undue discrimination, however, the Commission must order the TOA to be revised to permit the existing transmission rights holder to participate in the cataloging procedure and to provide the rightsholder the right to arbitrate the cataloging decision.

¹⁴ See Filing Letter, Attach. A, §20.1(3)(i). The arbitration provisions set forth in Exhibit P to the TOA are available only to existing rightsholders that convert their rights to RTO service. See *supra* n.9.

IV. PRICING.

A. Company Rate Period Should Be Extended to Ten Years.

In Stage 1, the Filing Utilities proposed a company rate period of ten years. The proposal was a consensus position of the Filing Utilities and regional stakeholders of an appropriate transition period. Such a transition period is necessary, it was agreed, because the establishment of RTOWest will cause cost shifts among the Filing Utilities and their transmission customers. A company rate period of sufficient length to ameliorate cost shifts and "rate shock" is crucial to adequate consumer protection. Although the Filing Utilities propose eight years, this time frame is insufficient; the Filing Utilities should return, at a minimum, to their original pledge of ten years.

B. The EIAC Violates Commission Pricing Policies Because it Will Undercollect Revenues: Either "Targeted" Customers Will Be Assessed Discriminatory Fees to Recover the Undercollection; or Costs Will Be Socialized Rather than Be Assessed to the Transaction That Created Them.

A number of different pricing proposals came out of the closed-door discussions among the Filing Utilities. It is PPC's understanding that the primary stumbling block to a pricing proposal acceptable to all the Filing Utilities was that some of the Filing Utilities have heavily relied on the use of short-term and nonfirm transmission services.¹⁵ These utilities were unwilling to assume any ongoing responsibility for compensating RTOWest based on historical use of short-term and nonfirm transmission and collected via the company rate, so an alternative mechanism was needed.

¹⁵ Short-term and nonfirm transmission services represented 18% of the Filing Utilities' total transmission revenue requirements. RTOWest Pricing Proposal, Filing Letter, Attach. E1, p. 4.

After much debate, the Filing Utilities proposed an External Interface Access Fee (EIAC) to collect the revenues formerly collected from short-term and non-firm transmission service. Two characteristics of the charge should be noted initially. First, the charge is termed a "transition element."¹⁶ Those Filing Utilities that have historically relied on short-term and non-firm service hope to avoid the EIAC at some point, and thus escape any responsibility for paying for their historical short-term and non-firm use of the transmission system. Second, the EIAC can be discounted to "minimize any uneconomic impacts."¹⁷ To the extent that the EIAC is discounted, it will create a revenue under recovery that will have to be collected through other means. Given that the EIAC, as proposed, would be set at a level of \$6.37/MWh, it will likely be discounted quite often.¹⁸ It is reasonable to presume that costs shifted away from short-term and non-firm transmission users would be imposed upon firm transmission service users. PPC member utilities have generally relied on firm transmission rights to serve their loads.

Realizing that the revenues from the EIAC and any surplus revenue from the congestion management system might not yield enough money to offset the lost revenues from historical short-term and non-firm sales, the Filing Utilities propose a "Backstop Recovery Mechanism" to collect additional money, if necessary, to meet a defined "Revenue Recovery Target." The Filing Utilities suggest that, if a Backstop Recovery Mechanism is necessary,

¹⁶Filing Letter, Attachment E1, p. 7.

¹⁷*Id.*

¹⁸Consultants to the Filing Utilities recently informed us that a nascent yet unreleased study indicates that out-of-region exports would not increase under RTOWest; in other words, there would be no incremental export revenues from the EIAC.

[o]nce triggered by under recovery, RTOWest will be responsible for developing a set of additional charges or modifications to its pricing policies to correct the cumulative shortfall and recover the Revenue Recovery Target on a prospective basis. In establishing charges, RTOWest will determine the possible cause of the shortfall and design the new charges to align cause and effect if possible. For instance, RTOWest might find that under recovery is due in part to the fact that increasing load is reducing available system capacity, resulting in reduced MW of FTO sales. In that case a prorata share of the shortfall could be allocated to the loads whose growth has contributed to the reduction in revenues flowing to the Replacement Revenue Pool (or, alternatively, reducing the allocation for a PTO to achieve the same effect). Other possibilities for causal relationships may exist, such as a change in usage by an affiliated merchant.

RTOWest Pricing Proposal, Filing Letter, Attach. E1, p. 22.

We will return to the issue of whether the Filing Utilities really intend to have their merchant functions subject to the Backstop Recovery Mechanism, but the example of load growth leading to under recovery (cited above) is interesting. A handout that the Filing Utilities provided at an informational meeting also used this example. The Filing Utilities made it clear that their example referred to the load growth of utilities that had not converted their transmission contracts to RTO service.¹⁹ In other words, utilities that want to continue to exercise their existing transmission rights may be subject to a targeted Backstop Recovery Mechanism under the Filing Utilities' proposal.²⁰

¹⁹In their Revised Pricing Summary, Mar. 20, 2002, the Filing Utilities announce that, if the backstop is triggered by sustained under recovery, "RTOWest may consider causal relationships and target prorata share, for instance if load growth under CTRs [Catalogued Transmission Rights] is reducing available system capacity and FTO sales." Revised Pricing Summary, Mar. 20, 2002, p. 13 (this document is available on the RTOWest website at http://www.rtowest.org/Doc/PRCG_PricingProposalSlidesMar212002.PDF [please note that this document may take some time to load to your browser]).

²⁰Interestingly enough, while the Filing Utilities exempt their merchant affiliates from surcharges under the Backstop Recovery Mechanism, see below, there is no exemption in the event the EIA collect excess revenues. The Backstop Recovery Mechanism also could operate if the EIA and any surplus revenue from the congestion management system over collects revenues. The Filing Utilities explain as follows: (cont.)

Singling out this class of customers, when other classes may contribute to the undercollection, is unduly discriminatory. *See Sithe/Independence Power Partners v. FERC*, 85 F.3d 1 (D.C. Cir. 2002) (remanding a rate that overcollected losses and refunded the excess proceeds through a reduced scheduling charge); *Elec. Consumers Resource Council v. FERC*, 747 F.2d 1511, (D.C. Cir. 1984) (remanding a rate proposal that caused some customers to cross-subsidize others). The Commission should rule prospectively that this method of making up the underrecovery is contrary to section 205 of the Federal Power Act, 16 U.S.C. § 824d(a), (b).

If RTOWest fails to find a culprit, then “a more general charge may be required.”²¹ In this case, shortfalls from the EIAC and any surplus revenue from the congestion management system will be spread to transmission customers generally. In other words, a shortfall in the EIAC, which was created primarily to recover costs now recovered from short-term and nonfirm users of the transmission system, will not be assigned back to those users but will be assigned to transmission customers more generally, thereby shifting costs to firm users of the transmission system. Even as a transition charge, this is not an acceptable proposal. The charge violates the prohibition against socializing costs. Order 2000, FERC Stats. & Regs. ¶ 31,089 at 31,219.

(cont.) As with underrecovery, RTOWest will propose an appropriate mechanism for adjusting the balances in the Replacement Revenue Pool—for instance, using a portion of the Replacement Revenue Pool to lower the Grid Management Charge, reducing External Interface Access Fees, or holding reserve[sic] to cover future shortfalls if a single large year triggers the Backstop Recovery Mechanism.

RTOWest Pricing Proposal, Page 23. Curiously, the example of citing transmission customers with load growth that was so prominent in the shortfall case is missing in the refund case.

²¹ Filing Letter, Attach. E1, p. 22

C. Exemption of PTOMerchantFunctions from EIAC Backstop Is Discriminatory, Unjust and Unreasonable in Violation of the Federal Power Act.

The Filing Utilities assert that a change in usage by an affiliated merchant might lead to that merchant being subject to a targeted charge under the Backstop Recovery Mechanism. Filing Letter, Attach. E1, p. 22. The Filing Utilities have included a measure in their proposal, however, that safeguards them from identifying the merchant functions of the Filing Utilities as a “possible cause” of any shortfall in the Replacement Revenue Pool. Exhibit G to the TOA, regarding Company Rates, contains the following definition:

Allocated Merchant Function External Interface Access Fee Revenue
means revenues from an Executing Transmission Owner’s affiliated merchant for use of External Interface Points located on the facilities owned by an Executing Transmission Owner. These revenues are not included in the Replacement Revenue Pool, but are credited directly to the Executing Transmission Owner to lower revenue requirements.

Filing Letter, Attach. A, Exh. G, p. G-1. In other words, a Filing Utility’s merchant function that exports through a point owned by that Filing Utility does not pay the EIAC into Replacement Revenue Pool (as does everyone else), but uses the EIAC to lower the Filing Utility’s revenue requirements. Thus it will be difficult to argue that any shortfall in EIAC payments by a Filing Utility contributes to a shortfall in the Replacement Revenue Pool when those EIAC payments were never put into the Replacement Revenue Pool to begin with. This shields the merchant functions of the Filing Utilities from exposure to the targeted Backstop Recovery Mechanism.

AratethatprovidespreferentialtreatmenttotheFilingUtilities' merchant functionsisundulydiscriminatoryandpreferentialinviolationofsection205(b)ofthe FederalPowerAct.16U.S.C.§824d(b).

D. TheFilingUtilities'PricingProposalShouldBeRejectedandthe CommissionShouldDirecttheFilingUtilitie sEithertoEngageina CollaborativeProcesswithTransmissionCustomerstoDevelopan AcceptablePricingProposalortoSeatanIndependentRTOWest BoardandDirectittoDevelopaPricingProposal.

TheeffortsoftheFilingUtilitieshaveyieldedade ficientpricingproposal.By proposingtoexempttheirmerchantfunctionsfromthefulleffectsofthatdefective pricingproposal,theFilingUtilitiesdemonstratetheirinabilitytodevelopindependently apricingproposalthatdoesnotadvantagetheir interests.Becausethepricingproposalis undulydiscriminatoryandpreferential,assetforthinIV(A)and(B)ofthispleading,the CommissionshouldrejecttheFilingUtilities'pricingproposal.TheCommissionshould further(1)directtheFilingUt ilitiestodevelopanewpricingproposalincooperation withtheirtransmissioncustomers;or(2)directthatanindependentRTOWestboardbe seatedanddirecttheboardtocomeupwithatrulyindependentpricingproposal.

V. LIABILITY.

TheTOAcontainsprovisionsthatallocateliabilityamongandbetweenRTO WestandthePTOs.TheFilingUtilities,whichstandtobenefitsignificantlyfromthe provisions,draftedtheTOA.BecauseRTOWestdoesnotyethaveanindependent board,theseprovisionss houldberedactedfromtheTOA.WhenRTOWestseatsan independentboard,RTOWestshouldnegotiatewiththeFilingUtilities,andconsultwith stakeholdersandprospectivePTOs,toallocateliabilitybetweenandamongthepartiesto theTOA.

In the public process leading to Order 2000, numerous participants suggested that the Commission should make a rule regarding the allocation of liability between an RTO and transmission owners that turnover control of transmission assets to the RTO.²² The Commission declined to do so. Rather, it opted to address liability on a case-by-case basis.²³

In the Stage 1 Alternative Filing, the draft TOA contained a provision noting the "Agreement Limiting Liability Among RTOWest Participants" (Agreement Limiting Liability) and RTOWest's obligation to ensure that all PTOs execute that agreement. Suppl. Compliance Filing and Request for Declaratory Order, etc., Attach. S, § 17, p. 55-56. The proposal represented a general agreement among Filing Utilities and stakeholders that the current allocation of liabilities, as set forth in the Western Interconnected Electrical Systems Agreement (WIES), should be continued. *Suppl. Compliance Filing, etc., Avista Corporation*, FERC Docket No. RT01 -35-000, Filing Letter, p. 88. (Oct. 16, 2000) (Suppl. Compliance Filing).²⁴ The Commission largely rejected the Agreement Limiting Liability. *Avista Corporation*, 95 FERC ¶ 61,114 at 61,346-47 (Apr. 26, 2001) (April 26 Order). In its July 12 order on rehearing, the Commission accepted the RTOWest proposal "to allocate risk among transmission owners and the RTO" but rejected its attempt to limit the rights of third parties. *Avista Corporation*, 96 FERC ¶ 61,058 at 61,181 -82 (July 12, 2001).

²² Order 2000, FERC Stats. & Regs. ¶ 31,089 at 31,100 -01.

²³ Order 2000, ¶ 31,089 at 31,106.

²⁴ See also Comments of Avista Corporation, *Standardizing Generator Interconnection Agreements & Procedures*, FERC Docket No. RM02 -1-000, p. 14 -16 (Jan. 31, 2002).

The allocation provisions in the Stage 2 TOA are set forth in section 19. Filing Letter, Attach. A, § 19. These include provisions requiring RTOWest to obtain and keep in force insurance of an unspecified amount (sections 19.1.1 - 19.1.3, 19.5); provisions for waiver of subrogation rights (section 19.2), waiver and release of consequential damages claims (section 19.7.1); waiver and release of certain tort claims (sections 19.7.2, 19.8); provisions limiting contribution (section 19.6); and a provision limiting RTOWest's and the PTO's right to propose tariff modifications (section 19.4). Filing Letter, Attach. A, § 19.

The provisions allocating risk and liability among the parties changed between Stage 1 and the instant filing. For example, obligations of the parties to design, construct, operate, maintain and use its electric system in accordance with good utility practice are no longer mutual. Compare Filing Letter, Attach. A, §§ 13.1, 13.2, with Suppl. Compliance Filing, etc., Attach. Y, § 3.1. This provision was an important component of the liability agreement because it provided a common baseline of behavior and helped define the parties' risks. Within the liability provisions themselves, the Stage 1 agreement specifically preserved WIES and in the event of conflict between WIES and the TOA, WIES controlled. Suppl. Compliance Filing, etc., Attach. Y, § 10.1.

Because the provisions have changed, it is appropriate to revisit them. The liability provisions in the Stage 2 TOA contain unequal liability obligations and rights that shift liability to RTOWest and its customers and do not adequately protect the interests of RTOWest. The Commission should order that these provisions be removed until an independent board has been seated, has the chance to review them and decides whether to renegotiate them, if it chooses to do so.

A. The TOA Liability Provisions Do Not Contain Equal Obligations to Maintain The System and Unbalance the Allocation of Risks of Liabilities Among the Parties.

The TOA requires RTOWest to comply at all times with good utility practice, NERC and WECC standards and all regulations, statutes, treaties and PTOs' standards. TOA, § 13.1. There is no parallel obligation on the part of the PTO to comply with these standards in the maintenance and operation of its system and interconnected, non-RTOWest transmission facilities. Filing Letter, Attach. A, § 13.2. ²⁵ The lack of a parallel obligation in the PTO limits RTOWest's ability to confine and understand its risk in indemnifying the PTO and providing the releases from liability contained in TOA section 19.

B. The TOA Contribution Provision Attempts to Limit the Liability of PTOs and Would Shift the Costs of the Liability to Other Users of the Transmission System by Forcing RTOWest to Bear the Uncollected Cost.

Section 19.6 provides that the PTO has no liability

ARISING OUT OF... ANY LOSS OF OR DAMAGE TO PROPERTY OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR DIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS AND LOSS OF USE OF PROPERTY) ARISING OUT OF OR RESULTING FROM ANY DISRUPTION, INTERRUPTION, SUSPENSION, CURTAILMENT OR FLUCTUATION OF SERVICE TO BE PROVIDED BY RTOWEST OR ARISING OUT OF OR RESULTING FROM RTOWEST'S OPERATION, MAINTENANCE OR USE OF ANY RTOWEST CONTROLLED TRANSMISSION FACILITIES { OR CERTAIN DISTRIBUTION FACILITIES }.

²⁵ The PTO and RTOWest will negotiate a maintenance plan, TOA, filing Letter, Attach. A, § 11, but that is not a substitute for a parallel TOA obligation. First, it is underinclusive of the actions that should be held to the standards; design, construction and operations are not included. Second, the TOA does not require adherence to any standard; those must be negotiated. TOA, filing Letter, Attach. A, § 11.2. Third, these plans will not be filed with or reviewed by the Commission.

TOA, § 19.6. This provision limits a PTO's liability to RTOWest for damages arising out of a disruption in RTOWest transmission service regardless of the cause of the disruption.

If the PTO's action or inaction contributed to the disruption, this provision will do more than allocate liability between RTOWest and the PTO. It will shift responsibility for the PTO's liability to RTOWest because RTOWest will have no recourse against the PTO. This will cause RTOWest to absorb costs it should not bear. Ultimately, it will not be RTOWest that bears those costs, of course; it will be RTOWest's customers. RTOWest acts as a billing and collection agency and will pass all costs through to its customers.

Section 19.6 also provides that the PTO shall have no liability for contribution or obligation to make payment on account of such damage or loss. TOA, § 19.6. Moreover, the provision limits a PTO's obligation to make contributions pursuant to section 19.

With respect to any amount that, pursuant to Section 19 of this Agreement, is to be paid by or contributed to pro rata by Bonneville or any other federal power marketing authority and any Participating Transmission Owners, the Executive Transmission Owners shall have no obligation to make any such payment or contribution, if and to the extent that Bonneville or any other federal power marketing authority does not make its pro rata payment or contribution of such amount.

TOA, § 19.6. Thus, the Filing Utilities seek to limit their liability for payments by indirectly arrogating to themselves the protection of the Federal Tort Claims Act. RTOWest would owe any amounts not collected from the PTOs and for which RTOWest is jointly liable. RTOWest's customers will have to pay for liabilities that Filing Utilities should absorb.

C. The Commission Should Redact the Provisions Allocating Liability Between the PTO and RTOWest and Order RTOWest to Resubmit Risk and Liability Allocation Provisions in Their Compliance Filing After an Independent RTOWest Board Has Been Seated and Has Negotiated Those Provisions.

The Commission should remove section 19.6 from the draft TOA and reinstate an obligation of the PTO to design, construct, operate and maintain its transmission facilities to the same standard required of RTOWest in section 13.1.TOA, §§ 19.6, 13.1. Section 19.6 improperly limits a PTO's liability to RTOWest and causes RTOWest to accept liability for the PTO's actions. The failure to include an obligation of the PTO to adhere to good utility practice, WECC and NERC standards and other industry benchmarks for responsible conduct raises RTOWest's risk of liability.

While the Filing Utilities wish to have these protections and have negotiated for them among themselves, the Filing Utilities are not the appropriate stewards of RTOWest's or the Northwest's interests in this matter. An independent board will govern RTOWest. After that board is seated, RTOWest will be in a position to determine how its interests should be served. Until that time, these provisions should be removed in order to give RTOWest a full range of options to elect from in negotiating liability allocation and limitation provisions for the TOA.

Providing an independent board with the time and opportunity to make these decisions would be consistent with the Commission's previous decisions. In *Grid Florida LLC* the Commission refused to accept the sponsoring utilities' moratorium on changes to the rated design. *Grid Florida LLC*, 94 FERC ¶ 61,363 at 62,350 (Mar. 28, 2001). It opted instead to ensure that the new RTOWest would control rated design decisions.

Werecognizethat,inthetransitiontoanRTO,transmissionownersmay proposearatedesignthatprevents cost -shiftingandassuresrevenue neutrality.Beyondthat,however,inordertoestablishthetranscoasaviable,stand -aloneentity,theRTO(asopposedtothepassiveowners) shouldbeabletomakechangesinratedesignonanongoingbasisonceit beginsoperations.

GridFloridaLLC ,94FERCat62,350.Here,theFilingUtilitiesproposetoseatthe boardonNovember4,2003,andtoexecutetheTOAswithinthefollowingmonth.

FilingLetter,Attach.L,p.5.Thistimeframeallowsnoopportunityfor theindependent boardtoreview,rejectandrenegotiateanyportionoftheTOA.EventhoughtheFiling UtilitiesarenotsubmittingtheTOAforfinalapproval,theCommissionshouldnottake anyactionthatvalidateschoicestheyhavemadeintheabsence ofanindependentRTO West.

VI. IMPLEMENTATION PLAN.

TheFilingUtilitiesincludean *IllustrativeSummaryofanRTOWest ImplementationPlan* ,FilingLetter,Attach.L(IllustrativeSummary).TheIllustrative SummaryshowsthatanindependentboardofdirectorswillbeseatedonNovember4, 2003.FilingLetter,Attach.L,p.3.Significantworkisscheduledtoprecedetheseating ofthatboard.Thisworkincludesoftwaredevelopmentcontractdevelopment;lease agreementsforAGCconnectivity;assessmentanddevelopmentofoperations requirements;andthecompletionofspecifications,selectionofvendorandsoftwareand systemsdevelopmentforseamsinfrastructuremanagement.FilingLetter,Attach.L, pp. 11-12.

In *GridFloridaLLC* theCommissionheldthatanindependentboardorsome interimindependentmanagementshouldmakecriticaldecisionsofthistype.

The Commission is sensitive to the need to expedite the formation of Grid Florida to allow it to commence operation as soon as possible. However, we are also sensitive to concerns raised about the independence of an interim LLC managed by Applicants and encourage that the independent Board be seated quickly. Therefore, the Commission will approve the formation of an interim LLC, to be managed by Applicants prior to the date that the independent Board of Directors of GF Inc., takes control of Grid Florida, subject to modification of the procedures proposed by Applicants, as discussed herein.

Grid Florida LLC, 94 FERC ¶61,363 at 62,326. The Commission held that activities such as leasing office space, establishing employee benefit plans and establishing accounting systems did not raise independence concerns. Other activities, however, did.

The concerns raised about the developmental work referred to in the third and fourth principles are more problematic, as they primarily involve steps necessary for implementing market design, which intervenors have alleged raise opportunities for Applicants to favor their own interests. Applicants have committed not to bind Grid Florida to software and other necessary systems until Commission approval is granted for market design. Applicants have also agreed to consult with the Advisory Committee before entering into commitments to acquire software and other systems implementing market design.

The Commission regards the acquisition of software and other systems implementing market design as significant to the future operation of the RTO and will require that any acquisition of software or other systems implementing market design not be undertaken until the independent Board has been seated and given its approval.

The Commission notes that the developmental work to be conducted under the fourth principle appears to allow for "significant" amounts of money to be spent for items other than those related to implementing market design or other jurisdictional service. Applicants have not identified at this time what other kinds of expenditures are contemplated under the fourth principle. Until the Advisory Committee has been formed, there should be no expenditure under this principle. When the Advisory Committee receives notice of Applicants' intent to enter into commitments to spend significant sums, it may raise any concerns by filing a complaint with the Commission. Furthermore, under Section 205 of the FPA, all of Grid Florida's expenditures will be subject to

our review and approval in determining whether Grid Florida's rates are just and reasonable.

Grid Florida LLC, 94 FERC ¶61,363 at 62,325 -26.

The Commission should apply the same ruling in this case. An independent board should be selected and seated as quickly as practicable. In the interim, the Filing Utilities should be barred from making any decisions involving significant expenditures or acquisition of software or systems that could be used to lock in preferential treatment of Filing Utility interests. If the Commission believes that it would be beneficial to establish an interim Advisory Committee made up of non-Filing Utility stakeholders, PPC would support that decision. Given the level of effort involved in identifying qualified candidates and selecting a board of directors, this may be an advantageous route. The Advisory Committee must have substantial authority, however, for this alternative to be meaningful. A committee to which the Filing Utilities may pay lip service will do nothing to ease concern over independence.

VII. ARBITRATION.

The draft TOA establishes two classes of parties and two classes of arbitration. Customers of PTOs that choose to convert their existing transmission rights are given the right to arbitrate conversion issues. TOA, section 20, sets forth the arbitration rights of RTOWest and PTO. They may select from baseball and traditional styles of arbitration, TOA section 20.4, have the right to discovery, TOA section 20.3.7, and extensive process. Filing Letter, Attach. A, §20.3.7, 20.4. With few exceptions, any dispute arising under the TOA may be arbitrated. Filing Letter, Attach. A, §20.1.

Compared to these rights, the rights and procedures provided pursuant to Exhibit P to the TOA are severely restricted and distinctly inferior compared to the arbitration rights afforded to PTOs and RTOWest. Exhibit P provides limited arbitration rights for (1) disputes pursuant to the RTOWest Tariff concerning wholesale access to, or the adequacy of, wholesale service over facilities that are not RTOWest Controlled Transmission Facilities and (2) disputes concerning the conversion of Pre-Existing Transmission Agreements to Catalogued Transmission Rights.

Filing Letter, Attach. A, Exh. P, p. 1. The arbitrator's authority is restricted. Filing Letter, Attach. A, Exh. P, §§ I(A)(4), (5). The issues that may be raised are restricted. Filing Letter, Attach. A, Exh. P, §§ I(A)(1), (2), (5); II(B)1), (2). If an existing rights holder wishes to take issues to arbitration, its decision to use arbitration becomes irrevocable and it cannot opt to dismiss the complaint. Filing Letter, Attach. A, Exh. P, § II(B)(3). In those arbitrations, the transmission customer has the burden of proof. Filing Letter, Attach. A, Exh. P, § II(B)(4).

Moreover, even under Exhibit P the PTOs that are investor-owned utilities will enjoy greater rights than their transmission customer taking service under an Open Access Transmission Tariff (OATT). These PTOs take service under agreements that explicitly state the terms and conditions in the body of the contract. The terms and conditions are not subject to change as the OATT changes. For parties currently taking service under an OATT, however, "[t]he right to arbitrations shall not be available for cataloging of Open Access Transmission Tariff terms and conditions that may be unilaterally modified by the transmission provider...." Filing Letter, Attach. A, Exh. P, §§ II(B)(1). The PTO will have the opportunity to arbitrate and potentially expand, or at

least retain, its full rights. The PTO's customers will not have that right. Many of these non-OATT contracts have received expansive use of the system, sometimes in excess of their contractual rights to use the system. To the extent that the system is internally constrained, the ability to argue "course of dealing" will provide the PTO to obtain greater rights in a finite system. The result is inherently inequitable.

No rationale for providing inferior rights is evident in the proposal. The establishment of inferior rights is unduly discriminatory and is, therefore, unlawful. 16 U.S.C. § 824d(b). The Commission should strike Exhibit P and instruct the Filing Utilities to amend the draft TOA to provide the same arbitration rights to those PTO customers that choose to convert their existing transmission rights.

VIII. DEFINITION OF INTERCONNECTED LOAD.

The TOA defines "Interconnected Load" as

If the Executing Transmission Owner is Bonneville, those loads interconnected with the Electric System of the Executing Transmission Owner; provided that loads of another Participating Transmission Owner served by the Executing Transmission Owner under general transfer agreements (including loads served through new delivery points) shall be deemed the Interconnected Loads of the Participating Transmission Owner taking service for such loads under the general transfer agreement. If the Executing Transmission Owner is a "public utility as defined by the Federal Power Act," "Interconnected Load" means those loads interconnected with the Electric System of the Executing Transmission Owner; provided that loads served under General Transfer Agreements (including loads served through new delivery points but not loads served in additional service territories annexed after the date of this Agreement) shall be deemed the Interconnected Loads of Bonneville.

Filing Letter, Attach. A, Exh. A, p. A -10.²⁶ Interconnected Loads are assigned billing determinants in accordance with a pricing proposal to be submitted to and approved by the Commission. *Id.* (definition of Interconnected Load Billing Determinants).

The definition of Interconnected Load is susceptible to a number of different interpretations. One possible interpretation is that Interconnected Load comprises the gross load of the customer without regard for how the load is served. The Commission should clarify that the definition and billing determinants applies only to net loads so that generation behind the meter is properly excluded. ²⁷

IX. REQUEST FOR RELIEF.

A. PPC requests that the Commission deny the Filing Utilities' request for declaratory order on the grounds that the RTOWest proposal is unjust and unreasonable and not in the public interest.

B. If the Commission denies PPC's request for relief in IX(A), above, PPC requests that the Commission act as follows:

1. PPC requests that the Commission order the Filing Utilities to revise the TOA to (a) provide express, enforceable and arbitratable rights to parties that have contracts for transmission rights on PTO transmission systems which protect those

²⁶ PPC objects to the fact that Interconnected Load is not defined for BCHydro, a non-jurisdictional, non-U.S., Filing Utility. The Commission should instruct the Filing Utilities to provide a parallel definition for comparable loads of BCHydro.

²⁷ PPC expressly reserves the right to raise in the future all policy and legal objections regarding the ability of TransConnect LLC to retain or merge Interconnect Loads and Company Rates of TransConnect utilities and regarding the pronouncement that "[n]on-ferc jurisdictional transmission owners located in the United States, other than Bonneville, that execute a Transmission Operating Agreement will not... have a separate Company Rate. Instead, such entities will pay the Company Rate of the Participating Transmission Owner whose rate was applicable before execution by such entity of the Transmission Operating Agreement." Filing Letter, Attach. A, Exh. A, p. A -10. The issues are not ripe at this time because no pricing proposal for TransConnect is offered and because no U.S. non-jurisdictional utility, other than Bonneville, has expressed an interest in joining RTOWest should it form.

existing rights from diminution or abrogation; and (b) permit the existing transmission rights holder to participate in the cataloging procedure and to provide the rights holder the right to arbitrate the cataloging decision.

2. PPC requests that the Commission reject the Filing Utilities' pricing proposal on the grounds that the EIAC is unduly discriminatory and preferential. The Commission should further (1) direct the Filing Utilities to develop a new pricing proposal in cooperation with their transmission customers; or (2) direct that an independent RTOWest board be seated and direct the board to develop a truly independent pricing proposal.

3. PPC requests that the Commission order the Filing Utilities to redact section 19 of the TOA, Filing Letter, Attach A, § 19, and revise section 13. It to bind the Executing Transmission Owner to the same obligation to operate and maintain its transmission facilities as is imposed upon RTOWest. In its compliance filing, RTOWest should include whatever liability provisions are prescribed by the Commission by rulemaking and are negotiated by RTOWest and the Filing Utilities.

4. PPC requests that the Commission strike the illustrative implementation plan and order the Filing Utilities to refrain from executing any contracts or expending any amount of money for or in furtherance of the development of any market software or systems; any software or system related to or connected with the provision of any jurisdictional service; any control infrastructure; and any seams software or systems until either (1) an independent board is seated; or (2) an Advisory Committee comprised of stakeholders (but not Filing Utilities or their affiliates) is formed and is empowered to review all proposed Filing Utility decisions on these matters and provide advice thereon.

The Commission should order the Filing Utilities to ensure that the Advisory Committee will have access to all information and materials regarding any contractor expenditures for a sufficient period of time (before any decision by the Filing Utilities) to permit the Advisory Committee to examine thoroughly and debate the proposal and provide its advice.

5. PPC requests that the Commission strike Exhibit P on the grounds that it is unduly discriminatory and instruct the Filing Utilities to amend the draft TO to provide the same arbitration rights to those PTO customers that wish to arbitrate disputes concerning adequacy of wholesale service over facilities not controlled by RTOWest and disputes over conversion of existing transmission rights.

6. PPC request that the Commission clarify that the definitions of Interconnected Load and Interconnected Load Billing Determinants apply only to net loads so that generation behind the meter is properly excluded, and order the Filing Utilities to provide a definition that governs B.C. Hydro's interconnected loads.

DATED this 29th Day of May, 2002.

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Certificate of Service

I hereby certify that I have served the foregoing *Protest and Comments of the Public Power Council on the Filing Utilities' Stage 2 Filing and Request for Declaratory Order* by First Class U.S. Mail, postage prepaid to all parties on the service list in Docket No. RT01-35-005 before the Federal Energy Regulatory Commission.

DATED this 29th day of May, 2002.

Denise Peterson
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Public Power Council